

ASSEMBLY BILL

No. 180

**Introduced by Assembly Member Jerome Horton
(Coauthors: Assembly Members Benoit and Matthews)**

January 24, 2005

An act to amend Sections 6738 and 8729 of the Business and Professions Code, and to amend Sections 16101, 16956, and 16959 of the Corporations Code, relating to limited liability partnerships.

LEGISLATIVE COUNSEL'S DIGEST

AB 180, as introduced, Jerome Horton. Limited liability partnerships: engineers and land surveyors.

Existing law provides for the licensure and regulation of engineers and land surveyors. Existing law provides for the formation of various types of legal entities, including limited liability partnerships and foreign limited liability partnerships. Under existing law, registered limited liability partnerships and foreign limited liability partnerships may only be formed for the practice of accountancy, the practice of law, and, until January 1, 2007, the practice of architecture.

This bill would also authorize registered limited liability partnerships and foreign limited liability partnerships to be formed for the practice of engineering or land surveying, and would provide that an engineer or land surveyor is not prohibited from practicing or offering to practice, within the scope of their registration, as a limited liability partnership.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6738 of the Business and Professions Code is amended to read:

6738. (a) This chapter does not prohibit one or more civil, electrical, or mechanical engineers from practicing or offering to practice within the scope of their registration, civil, electrical, or mechanical engineering as a sole proprietorship, partnership, *limited liability partnership*, firm, or corporation (hereinafter called business), if all of the following requirements are met:

(1) A civil, electrical, or mechanical engineer currently registered in this state is an owner, part owner, or officer in charge of the engineering practice of the business.

(2) All engineering plans, specifications, reports, and documents are prepared under the responsible charge of a registered engineer in the appropriate branch of professional engineering.

(3) The business name of a California business shall only contain the name of any person who is registered by the board in a branch of professional engineering, a licensed land surveyor, a licensed architect, or a geologist registered under the Geologist Act (Chapter 12.5 (commencing with Section 7800)). Any offer, promotion, or advertisement by the business which contains the name of any individual in the business, other than by use of the name of an individual in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(b) An out-of-state business with a branch office in this state shall meet the requirements of subdivision (a) and shall have a part owner or officer who is in charge of the engineering work in the branch in this state, who is registered in this state, and who is physically present at the branch office in this state on a regular basis. However, the name of the business may contain the name of any person not registered in this state if that person is appropriately registered in another state. Any offer, promotion, or advertisement which contains the name of any individual in the business, other than by use of the names of the individuals in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

1 (c) A fictitious name may be used for an engineering business
2 if (1) the name does not conflict with paragraph (3) of
3 subdivision (a) requiring that names used in the business name
4 shall be appropriately registered individuals, and (2) an
5 organization record form is filed with the board.

6 (d) A nonregistered person may also be a part owner or an
7 officer of a civil, electrical, or mechanical engineering business if
8 the requirements of subdivision (a) are met.

9 (e) This chapter does not prevent an individual or business
10 engaged in any line of endeavor other than the practice of civil,
11 electrical, or mechanical engineering from employing or
12 contracting with a registered civil, electrical, or mechanical
13 engineer to perform the respective engineering services
14 incidental to the conduct of business.

15 (f) This section shall not prevent the use of the name of any
16 business engaged in rendering civil, electrical, or mechanical
17 engineering services, including the use by any lawful successor
18 or survivor, which lawfully was in existence on December 31,
19 1987. However, the business is subject to paragraphs (1) and (2)
20 of subdivision (a), and the business shall file an organization
21 record form with the board as designated by board rule.

22 (g) A business engaged in rendering civil, electrical, or
23 mechanical engineering services may use in its name the name of
24 a deceased or retired person provided all of the following
25 conditions are satisfied:

26 (1) The person's name had been used in the name of the
27 business, or a predecessor in interest of the business, prior to and
28 after the death or retirement of the person.

29 (2) The person shall have been an owner, part owner, or
30 officer of the business, or an owner, part owner, or officer of the
31 predecessor in interest of the business.

32 (3) The person shall have been licensed as a professional
33 engineer, or a land surveyor, or an architect, or a geologist, (A)
34 by the appropriate licensing board if that person is operating a
35 place of business or practice in this state, or (B) by the applicable
36 state board in the event no place of business existed in this state.

37 (4) The person, if retired, has consented to the use of the name
38 and does not permit the use of the name in the title of another
39 professional engineering business in this state during the period
40 of the consent. However, the retired person may use his or her

1 name as the name of a new or purchased business if it is not
2 identical in every respect to that person's name as used in the
3 former business.

4 (5) The business shall be subject to the provisions of
5 paragraphs (1) and (2) of subdivision (a).

6 (6) The business files a current organization record form with
7 the board.

8 (h) This section does not affect the provisions of Sections
9 6731.2 and 8726.1.

10 SEC. 2. Section 8729 of the Business and Professions Code is
11 amended to read:

12 8729. (a) This chapter does not prohibit one or more licensed
13 land surveyors or civil engineers registered in this state prior to
14 1982 (hereinafter called civil engineers) from practicing or
15 offering to practice within the scope of their licensure, land
16 surveying as a sole proprietorship, partnership, *limited liability*
17 *partnership*, firm, or corporation (hereinafter called business), if
18 the following conditions are satisfied:

19 (1) A land surveyor or civil engineer currently licensed in the
20 state is an owner, part owner, or officer in charge of the land
21 surveying practice of the business.

22 (2) All maps, plats, reports, descriptions, or other documents
23 are prepared under the responsible charge of a land surveyor or
24 civil engineer.

25 (3) The business name of a California business shall only
26 contain the name of a person licensed by the board as a land
27 surveyor or registered by the board in any year as a civil
28 engineer. Any offer, promotion, or advertisement by the business
29 which contains the name of any individual in the business, other
30 than by use of the name of the individual in the business name,
31 shall clearly and specifically designate the license or registration
32 discipline of each individual named.

33 (b) An out-of-state business with a branch office in this state
34 shall meet the requirements of subdivision (a) and shall have a
35 part owner or officer who is in charge of the land surveying work
36 in this state, who is licensed in this state, and who is physically
37 present at the branch office in this state on a regular basis.
38 However, the name of the business may contain the name of a
39 person not licensed in this state, if that person is appropriately
40 licensed in another state. Any offer, promotion, or advertisement

1 which contains the name of any individual in the business, other
2 than by use of the name of the individual in the business name,
3 shall clearly and specifically designate the license or registration
4 discipline of each individual named.

5 (c) A fictitious name may be used for a land surveying
6 business if (1) the name does not conflict with the provisions of
7 paragraph (3) of subdivision (a) requiring that a name used in the
8 business name shall be that of an appropriately licensed
9 individual, and (2) an organization record is filed with the board.

10 (d) A nonregistered person may also be a part owner or an
11 officer of a land surveying business if the conditions of
12 subdivision (a) are satisfied.

13 (e) This chapter does not prevent an individual or business
14 engaged in any line of endeavor, other than the practice of land
15 surveying, from employing or contracting with a licensed land
16 surveyor or a registered civil engineer to perform the respective
17 land surveying services incidental to the conduct of business.

18 (f) This section shall not prevent the use of the name of any
19 business engaged in rendering land surveying services, including
20 the use by any lawful successor or survivor, which lawfully was
21 in existence on June 1, 1941. However, the business is subject to
22 the provisions of paragraphs (1) and (2) of subdivision (a) and
23 the business shall file an organization record form with the board
24 as designated by board rule.

25 (g) A business engaged in rendering land surveying services
26 may use in its name the name of a deceased or retired person if
27 the following conditions are satisfied:

28 (1) The person's name had been used in the name of the
29 business, or a predecessor in interest of the business, prior to the
30 death or retirement of the person.

31 (2) The person shall have been an owner, part owner, or
32 officer of the business, or an owner, part owner, or officer of the
33 predecessor in interest of the business.

34 (3) The person shall have been licensed as a land surveyor or a
35 civil engineer by the board, if operating a place of business or
36 practice in this state, or by an applicable state board in the event
37 no place of business existed in this state.

38 (4) The person, if retired, has consented to the use of the name
39 and does not permit the use of the name in the title of another
40 land surveying business in this state during the period of that

1 consent, except that a retired person may use his or her name as
2 the name of a new or purchased business, if that business is not
3 identical in every respect to that person's name as used in the
4 former business.

5 (5) The business shall be subject to paragraphs (1) and (2) of
6 subdivision (a).

7 (6) The business files a current organization record form with
8 the board.

9 (h) This section does not affect Sections 6731.2 and 8726.1.

10 SEC. 3. Section 16101 of the Corporations Code is amended
11 to read:

12 16101. As used in this chapter, the following terms and
13 phrases have the following meanings:

14 (1) "Business" includes every trade, occupation, and
15 profession.

16 (2) "Debtor in bankruptcy" means a person who is the subject
17 of either of the following:

18 (A) An order for relief under Title 11 of the United States
19 Code or a comparable order under a successor statute of general
20 application.

21 (B) A comparable order under federal, state, or foreign law
22 governing insolvency.

23 (3) "Distribution" means a transfer of money or other property
24 from a partnership to a partner in the partner's capacity as a
25 partner or to the partner's transferee.

26 (4) "Electronic transmission by the partnership" means a
27 communication (a) delivered by (1) facsimile telecommunication
28 or electronic mail when directed to the facsimile number or
29 electronic mail address, respectively, for that recipient on record
30 with the partnership, (2) posting on an electronic message board
31 or network that the partnership has designated for those
32 communications, together with a separate notice to the recipient
33 of the posting, which transmission shall be validly delivered
34 upon the later of the posting or delivery of the separate notice
35 thereof, or (3) other means of electronic communication, (b) to a
36 recipient who has provided an unrevoked consent to the use of
37 those means of transmission, and (c) that creates a record that is
38 capable of retention, retrieval, and review, and that may
39 thereafter be rendered into clearly legible tangible form.
40 However, an electronic transmission by a partnership to an

1 individual partner is not authorized unless, in addition to
2 satisfying the requirements of this section, the transmission
3 satisfies the requirements applicable to consumer consent to
4 electronic records as set forth in the Electronic Signatures in
5 Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

6 (5) “Electronic transmission to the partnership” means a
7 communication (a) delivered by (1) facsimile telecommunication
8 or electronic mail when directed to the facsimile number or
9 electronic mail address, respectively, which the partnership has
10 provided from time to time to partners for sending
11 communications to the partnership, (2) posting on an electronic
12 message board or network that the partnership has designated for
13 those communications, and which transmission shall be validly
14 delivered upon the posting, or (3) other means of electronic
15 communication, (b) as to which the partnership has placed in
16 effect reasonable measures to verify that the sender is the partner
17 (in person or by proxy) purporting to send the transmission, and
18 (c) that creates a record that is capable of retention, retrieval, and
19 review, and that may thereafter be rendered into clearly legible
20 tangible form.

21 (6) (A) “Foreign limited liability partnership” means a
22 partnership, other than a limited partnership, formed pursuant to
23 an agreement governed by the laws of another jurisdiction and
24 denominated or registered as a limited liability partnership or
25 registered limited liability partnership under the laws of that
26 jurisdiction (i) in which each partner is a licensed person or a
27 person licensed or authorized to provide professional limited
28 liability partnership services in a jurisdiction or jurisdictions
29 other than this state, (ii) which is licensed under the laws of the
30 state to engage in the practice of architecture, *the practice of*
31 *engineering, the practice of land surveying*, the practice of public
32 accountancy, or the practice of law, or (iii) which (I) is related to
33 a registered limited liability partnership that practices public
34 accountancy or, to the extent permitted by the State Bar,
35 practices law or is related to a foreign limited liability partnership
36 and (II) provides services related or complementary to the
37 professional limited liability partnership services provided by, or
38 provides services or facilities to, that registered limited liability
39 partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(7) “Licensed person” means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership services or who is lawfully able to render professional limited liability partnership services in this state.

(8) (A) “Registered limited liability partnership” means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) is licensed under the laws of the state to engage in the practice of architecture, *the practice of engineering*, *the practice of land surveying*, *the practice of public accountancy*, or the practice of law, or (iii) (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person,

1 other than an individual, and each partnership renders services
2 pursuant to an agreement with that other person, or (iii) one
3 partnership, directly or indirectly through one or more
4 intermediaries, controls, is controlled by, or is under common
5 control with, the other partnership.

6 (9) “Partnership” means an association of two or more persons
7 to carry on as coowners a business for profit formed under
8 Section 16202, predecessor law, or comparable law of another
9 jurisdiction, and includes, for all purposes of the laws of this
10 state, a registered limited liability partnership, and excludes any
11 partnership formed under Chapter 2 (commencing with Section
12 15501) or Chapter 3 (commencing with Section 15611).

13 (10) “Partnership agreement” means the agreement, whether
14 written, oral, or implied, among the partners concerning the
15 partnership, including amendments to the partnership agreement.

16 (11) “Partnership at will” means a partnership in which the
17 partners have not agreed to remain partners until the expiration of
18 a definite term or the completion of a particular undertaking.

19 (12) “Partnership interest” or “partner’s interest in the
20 partnership” means all of a partner’s interests in the partnership,
21 including the partner’s transferable interest and all management
22 and other rights.

23 (13) “Person” means an individual, corporation, business trust,
24 estate, trust, partnership, limited partnership, limited liability
25 partnership, limited liability company, association, joint venture,
26 government, governmental subdivision, agency, or
27 instrumentality, or any other legal or commercial entity.

28 (14) “Professional limited liability partnership services” means
29 the practice of architecture, *the practice of engineering*, *the*
30 *practice of land surveying*, the practice of public accountancy, or
31 the practice of law.

32 (15) “Property” means all property, real, personal, or mixed,
33 tangible or intangible, or any interest therein.

34 (16) “State” means a state of the United States, the District of
35 Columbia, the Commonwealth of Puerto Rico, or any territory or
36 insular possession subject to the jurisdiction of the United States.

37 (17) “Statement” means a statement of partnership authority
38 under Section 16303, a statement of denial under Section 16304,
39 a statement of dissociation under Section 16704, a statement of
40 dissolution under Section 16805, a statement of conversion or a

1 certificate of conversion under Section 16906, a statement of
2 merger under Section 16915, or an amendment or cancellation of
3 any of the foregoing.

4 (18) “Transfer” includes an assignment, conveyance, lease,
5 mortgage, deed, and encumbrance.

6 (19) The inclusion of the practice of architecture as a
7 professional limited liability partnership service permitted by this
8 section shall extend only until January 1, 2007.

9 SEC. 4. Section 16956 of the Corporations Code is amended
10 to read:

11 16956. (a) At the time of registration pursuant to Section
12 16953, in the case of a registered limited liability partnership,
13 and Section 16959, in the case of a foreign limited liability
14 partnership, and at all times during which those partnerships shall
15 transact intrastate business, every registered limited liability
16 partnership and foreign limited liability partnership, as the case
17 may be, shall be required to provide security for claims against it
18 as follows:

19 (1) For claims based upon acts, errors, or omissions arising out
20 of the practice of public accountancy, a registered limited
21 liability partnership or foreign limited liability partnership
22 providing accountancy services shall comply with one, or
23 pursuant to subdivision (b) some combination, of the following:

24 (A) Maintaining a policy or policies of insurance against
25 liability imposed on or against it by law for damages arising out
26 of claims in an amount for each claim of at least one hundred
27 thousand dollars (\$100,000) multiplied by the number of licensed
28 persons rendering professional services on behalf of the
29 partnership; however, the total aggregate limit of liability under
30 the policy or policies of insurance for partnerships with fewer
31 than five licensed persons shall not be less than five hundred
32 thousand dollars (\$500,000), and for all other partnerships is not
33 required to exceed five million dollars (\$5,000,000) in any one
34 designated period, less amounts paid in defending, settling, or
35 discharging claims as set forth in this subparagraph. The policy
36 or policies may be issued on a claims-made or occurrence basis,
37 and shall cover: (i) in the case of a claims-made policy, claims
38 initially asserted in the designated period, and (ii) in the case of
39 an occurrence policy, occurrences during the designated period.
40 For purposes of this subparagraph, “designated period” means a

1 policy year or any other period designated in the policy that is
2 not greater than 12 months. The impairment or exhaustion of the
3 aggregate limit of liability by amounts paid under the policy in
4 connection with the settlement, discharge, or defense of claims
5 applicable to a designated period shall not require the partnership
6 to acquire additional insurance coverage for that designated
7 period. The policy or policies of insurance may be in a form
8 reasonably available in the commercial insurance market and
9 may be subject to those terms, conditions, exclusions, and
10 endorsements that are typically contained in those policies. A
11 policy or policies of insurance maintained pursuant to this
12 subparagraph may be subject to a deductible or self-insured
13 retention.

14 Upon the dissolution and winding up of the partnership, the
15 partnership shall, with respect to any insurance policy or policies
16 then maintained pursuant to this subparagraph, maintain or obtain
17 an extended reporting period endorsement or equivalent
18 provision in the maximum total aggregate limit of liability
19 required to comply with this subparagraph for a minimum of
20 three years if reasonably available from the insurer.

21 (B) Maintaining in trust or bank escrow, cash, bank
22 certificates of deposit, United States Treasury obligations, bank
23 letters of credit, or bonds of insurance or surety companies as
24 security for payment of liabilities imposed by law for damages
25 arising out of all claims in an amount of at least one hundred
26 thousand dollars (\$100,000) multiplied by the number of licensed
27 persons rendering professional services on behalf of the
28 partnership; however, the maximum amount of security for
29 partnerships with fewer than five licensed persons shall not be
30 less than five hundred thousand dollars (\$500,000), and for all
31 other partnerships is not required to exceed five million dollars
32 (\$5,000,000). The partnership remains in compliance with this
33 section during a calendar year notwithstanding amounts paid
34 during that calendar year from the accounts, funds, Treasury
35 obligations, letters of credit, or bonds in defending, settling, or
36 discharging claims of the type described in this paragraph,
37 provided that the amount of those accounts, funds, Treasury
38 obligations, letters of credit, or bonds was at least the amount
39 specified in the preceding sentence as of the first business day of
40 that calendar year. Notwithstanding the pendency of other claims

1 against the partnership, a registered limited liability partnership
2 or foreign limited liability partnership shall be deemed to be in
3 compliance with this subparagraph as to a claim if within 30 days
4 after the time that a claim is initially asserted through service of a
5 summons, complaint, or comparable pleading in a judicial or
6 administrative proceeding, the partnership has provided the
7 required amount of security by designating and segregating funds
8 in compliance with the requirements of this subparagraph.

9 (C) Unless the partnership has satisfied subparagraph (D),
10 each partner of a registered limited liability partnership or foreign
11 limited liability partnership providing accountancy services, by
12 virtue of that person's status as a partner, thereby automatically
13 guarantees payment of the difference between the maximum
14 amount of security required for the partnership by this paragraph
15 and the security otherwise provided in accordance with
16 subparagraphs (A) and (B), provided that the aggregate amount
17 paid by all partners under these guarantees shall not exceed the
18 difference. Neither withdrawal by a partner nor the dissolution
19 and winding up of the partnership shall affect the rights or
20 obligations of a partner arising prior to withdrawal or dissolution
21 and winding up, and the guarantee provided for in this
22 subparagraph shall apply only to conduct that occurred prior to
23 the withdrawal or dissolution and winding up. Nothing contained
24 in this subparagraph shall affect or impair the rights or
25 obligations of the partners among themselves, or the partnership,
26 including, but not limited to, rights of contribution, subrogation,
27 or indemnification.

28 (D) Confirming, pursuant to the procedure in subdivision (c),
29 that, as of the most recently completed fiscal year of the
30 partnership, it had a net worth equal to or exceeding ten million
31 dollars (\$10,000,000).

32 (2) For claims based upon acts, errors, or omissions arising out
33 of the practice of law, a registered limited liability partnership or
34 foreign limited liability partnership providing legal services shall
35 comply with one, or pursuant to subdivision (b) some
36 combination, of the following:

37 (A) Each registered limited liability partnership or foreign
38 limited liability partnership providing legal services shall
39 maintain a policy or policies of insurance against liability
40 imposed on or against it by law for damages arising out of claims

1 in an amount for each claim of at least one hundred thousand
2 dollars (\$100,000) multiplied by the number of licensed persons
3 rendering professional services on behalf of the partnership;
4 however, the total aggregate limit of liability under the policy or
5 policies of insurance for partnerships with fewer than five
6 licensed persons shall not be less than five hundred thousand
7 dollars (\$500,000), and for all other partnerships is not required
8 to exceed seven million five hundred thousand dollars
9 (\$7,500,000) in any one designated period, less amounts paid in
10 defending, settling, or discharging claims as set forth in this
11 subparagraph. The policy or policies may be issued on a
12 claims-made or occurrence basis, and shall cover (i) in the case
13 of a claims-made policy, claims initially asserted in the
14 designated period, and (ii) in the case of an occurrence policy,
15 occurrences during the designated period. For purposes of this
16 subparagraph, “designated period” means a policy year or any
17 other period designated in the policy that is not greater than 12
18 months. The impairment or exhaustion of the aggregate limit of
19 liability by amounts paid under the policy in connection with the
20 settlement, discharge, or defense of claims applicable to a
21 designated period shall not require the partnership to acquire
22 additional insurance coverage for that designated period. The
23 policy or policies of insurance may be in a form reasonably
24 available in the commercial insurance market and may be subject
25 to those terms, conditions, exclusions, and endorsements that are
26 typically contained in those policies. A policy or policies of
27 insurance maintained pursuant to this subparagraph may be
28 subject to a deductible or self-insured retention.

29 Upon the dissolution and winding up of the partnership, the
30 partnership shall, with respect to any insurance policy or policies
31 then maintained pursuant to this subparagraph, maintain or obtain
32 an extended reporting period endorsement or equivalent
33 provision in the maximum total aggregate limit of liability
34 required to comply with this subparagraph for a minimum of
35 three years if reasonably available from the insurer.

36 (B) Each registered limited liability partnership or foreign
37 limited liability partnership providing legal services shall
38 maintain in trust or bank escrow, cash, bank certificates of
39 deposit, United States Treasury obligations, bank letters of credit,
40 or bonds of insurance or surety companies as security for

1 payment of liabilities imposed by law for damages arising out of
2 all claims in an amount of at least one hundred thousand dollars
3 (\$100,000) multiplied by the number of licensed persons
4 rendering professional services on behalf of the partnership;
5 however, the maximum amount of security for partnerships with
6 fewer than five licensed persons shall not be less than five
7 hundred thousand dollars (\$500,000), and for all other
8 partnerships is not required to exceed seven million five hundred
9 thousand dollars (\$7,500,000). The partnership remains in
10 compliance with this section during a calendar year
11 notwithstanding amounts paid during that calendar year from the
12 accounts, funds, Treasury obligations, letters of credit, or bonds
13 in defending, settling, or discharging claims of the type described
14 in this paragraph, provided that the amount of those accounts,
15 funds, Treasury obligations, letters of credit, or bonds was at
16 least the amount specified in the preceding sentence as of the first
17 business day of that calendar year. Notwithstanding the pendency
18 of other claims against the partnership, a registered limited
19 liability partnership or foreign limited liability partnership shall
20 be deemed to be in compliance with this subparagraph as to a
21 claim if within 30 days after the time that a claim is initially
22 asserted through service of a summons, complaint, or comparable
23 pleading in a judicial or administrative proceeding, the
24 partnership has provided the required amount of security by
25 designating and segregating funds in compliance with the
26 requirement of this subparagraph.

27 (C) Unless the partnership has satisfied the requirements of
28 subparagraph (D), each partner of a registered limited liability
29 partnership or foreign limited liability partnership providing legal
30 services, by virtue of that person's status as a partner, thereby
31 automatically guarantees payment of the difference between the
32 maximum amount of security required for the partnership by this
33 paragraph and the security otherwise provided in accordance
34 with the provisions of subparagraphs (A) and (B), provided that
35 the aggregate amount paid by all partners under these guarantees
36 shall not exceed the difference. Neither withdrawal by a partner
37 nor the dissolution and winding up of the partnership shall affect
38 the rights or obligations of a partner arising prior to withdrawal
39 or dissolution and winding up, and the guarantee provided for in
40 this subparagraph shall apply only to conduct that occurred prior

1 to the withdrawal or dissolution and winding up. Nothing
2 contained in this subparagraph shall affect or impair the rights or
3 obligations of the partners among themselves, or the partnership,
4 including, but not limited to, rights of contribution, subrogation,
5 or indemnification.

6 (D) Confirming, pursuant to the procedure in subdivision (c),
7 that, as of the most recently completed fiscal year of the
8 partnership, it had a net worth equal to or exceeding fifteen
9 million dollars (\$15,000,000).

10 (3) For claims based upon acts, errors, or omissions arising out
11 of the practice of architecture, a registered limited liability
12 partnership or foreign limited liability partnership providing
13 architectural services shall comply with one, or pursuant to
14 subdivision (b) some combination, of the following:

15 (A) Maintaining a policy or policies of insurance against
16 liability imposed on or against it by law for damages arising out
17 of claims in an amount for each claim of at least one hundred
18 thousand dollars (\$100,000) multiplied by the number of licensed
19 persons rendering professional services on behalf of the
20 partnership; however, the total aggregate limit of liability under
21 the policy or policies of insurance for partnerships with fewer
22 persons shall not be less than five hundred thousand dollars
23 (\$500,000), and for all other partnerships is not required to
24 exceed five million dollars (\$5,000,000) in any one designated
25 period, less amounts paid in defending, settling, or discharging
26 claims as set forth in this subparagraph. The policy or policies
27 may be issued on a claims-made or occurrence basis, and shall
28 cover: (i) in the case of a claims-made policy, claims initially
29 asserted in the designated period, and (ii) in the case of an
30 occurrence policy, occurrences during the designated period. For
31 purposes of this subparagraph, “designated period” means a
32 policy year or any other period designated in the policy that is
33 not greater than 12 months. The impairment or exhaustion of the
34 aggregate limit of liability by amounts paid under the policy in
35 connection with the settlement, discharge, or defense of claims
36 applicable to a designated period shall not require the partnership
37 to acquire additional insurance coverage for that designated
38 period. The policy or policies of insurance may be in a form
39 reasonably available in the commercial insurance market and
40 may be subject to those terms, conditions, exclusions, and

1 endorsements that are typically contained in those policies. A
2 policy or policies of insurance maintained pursuant to this
3 subparagraph may be subject to a deductible or self-insured
4 retention.

5 Upon the dissolution and winding up of the partnership, the
6 partnership shall, with respect to any insurance policy or policies
7 then maintained pursuant to this subparagraph, maintain or obtain
8 an extended reporting period endorsement or equivalent
9 provision in the maximum total aggregate limit of liability
10 required to comply with this subparagraph for a minimum of
11 three years if reasonably available from the insurer.

12 (B) Maintaining in trust or bank escrow, cash, bank
13 certificates of deposit, United States Treasury obligations, bank
14 letters of credit, or bonds of insurance or surety companies as
15 security for payment of liabilities imposed by law for damages
16 arising out of all claims in an amount of at least one hundred
17 thousand dollars (\$100,000) multiplied by the number of licensed
18 persons rendering professional services on behalf of the
19 partnership; however, the maximum amount of security for
20 partnerships with fewer than five licensed persons shall not be
21 less than five hundred thousand dollars (\$500,000), and for all
22 other partnerships is not required to exceed five million dollars
23 (\$5,000,000). The partnership remains in compliance with this
24 section during a calendar year notwithstanding amounts paid
25 during that calendar year from the accounts, funds, Treasury
26 obligations, letters of credit, or bonds in defending, settling, or
27 discharging claims of the type described in this paragraph,
28 provided that the amount of those accounts, funds, Treasury
29 obligations, letters of credit, or bonds was at least the amount
30 specified in the preceding sentence as of the first business day of
31 that calendar year. Notwithstanding the pendency of other claims
32 against the partnership, a registered limited liability partnership
33 or foreign limited liability partnership shall be deemed to be in
34 compliance with this subparagraph as to a claim if within 30 days
35 after the time that a claim is initially asserted through service of a
36 summons, complaint, or comparable pleading in a judicial or
37 administrative proceeding, the partnership has provided the
38 required amount of security by designating and segregating funds
39 in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing architectural services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars (\$10,000,000).

(4) For claims based upon acts, errors, or omissions arising out of the practice of engineering or land surveying, a registered limited liability partnership or foreign limited liability partnership providing engineering or land surveying services shall comply with one, or pursuant to subdivision (b) some combination, of the following

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim and in the annual aggregate of at least one million dollars (\$1,000,000). The policy or policies may be issued on a claims-made or occurrence basis, and shall cover the following:

(i) In the case of a claims-made policy, claims initially asserted in the designated period.

(ii) In the case of an occurrence policy, occurrences during the designated period.

1 For purposes of this subparagraph, “designated period”
2 means a policy year or any other period designated in the policy
3 that is not greater than 12 months. The impairment or exhaustion
4 of the aggregate limit of liability by amounts paid under the
5 policy in connection with the settlement, discharge, or defense of
6 claims applicable to a designated period shall not require the
7 partnership to acquire additional insurance coverage for that
8 designated period. The policy or policies of insurance may be in
9 a form reasonably available in the commercial insurance market
10 and may be subject to those terms, conditions, exclusions, and
11 endorsements that are typically contained in those policies. A
12 policy or policies of insurance maintained pursuant to this
13 subparagraph may be subject to a deductible or self-insured
14 retention.

15 Upon the dissolution and winding up of the partnership, the
16 partnership shall, with respect to any insurance policy or
17 policies then maintained pursuant to this subparagraph,
18 maintain or obtain an extended reporting period endorsement or
19 equivalent provision in the maximum total aggregate limit of
20 liability required to comply with this subparagraph for a
21 minimum of three years if reasonably available from the insurer.

22 (B) Maintaining in trust or bank escrow, cash, bank
23 certificates of deposit, United States Treasury obligations, bank
24 letters of credits, or bonds of insurance or surety companies as
25 security for payment of liabilities imposed by law for damages
26 arising out of all claims in an amount of at least one million
27 dollars (\$1,000,000). The partnership remains in compliance
28 with this section during a calendar year notwithstanding
29 amounts paid during that calendar year from the accounts, funds,
30 Treasury obligations, letters of credit, or bonds in defending,
31 settling, or discharging claims of the type described in this
32 paragraph, provided that the amount of those accounts, funds,
33 Treasury obligations, letters of credit, or bonds was at least the
34 amount specified in the preceding sentence as of the first
35 business day of that calendar year. Notwithstanding the
36 pendency of other claims against the partnership, a registered
37 limited liability partnership or foreign limited liability
38 partnership shall be deemed to be in compliance with this
39 subparagraph as to a claim if, within 30 days after the time that
40 a claim is initially asserted through service of a summons,

1 *complaint, or comparable pleading in a judicial or*
2 *administrative proceeding, the partnership has provided the*
3 *required amount of security by designating and segregating*
4 *funds in compliance with the requirements of this subparagraph.*

5 *(C) Unless the partnership has satisfied subparagraph (D),*
6 *each partner of a registered limited liability partnership or*
7 *foreign limited liability partnership providing engineering, or*
8 *land surveying services, by virtue of that person's status as a*
9 *partner, thereby automatically guarantees payment of the*
10 *difference between the maximum amount of security required for*
11 *the partnership by this paragraph and the security otherwise*
12 *provided in accordance with subparagraphs (A) and (B),*
13 *provided that the aggregate amount paid by all partners under*
14 *these guarantees shall not exceed the difference. Neither*
15 *withdrawal by a partner nor the dissolution and winding up of*
16 *the partnership affects the rights or obligations of a partner*
17 *arising prior to withdrawal or dissolution and winding up, and*
18 *the guarantee provided for in this subparagraph shall apply only*
19 *to conduct that occurred prior to the withdrawal or dissolution*
20 *and winding up. Nothing contained in this subparagraph shall*
21 *affect or impair the rights or obligations of the partners among*
22 *themselves, or the partnership, including, but not limited to,*
23 *rights of contribution, subrogation, or indemnification.*

24 *(D) Confirming, pursuant to the procedure in subdivision (c),*
25 *that, as of the most recently completed fiscal year of the*
26 *partnership, it had a net worth equal to or exceeding ten million*
27 *dollars (\$10,000,000).*

28 *(b) For purposes of satisfying the security requirements of this*
29 *section, a registered limited liability partnership or foreign*
30 *limited liability partnership may aggregate the security provided*
31 *by it pursuant to subparagraphs (A), (B), (C), and (D) of*
32 *paragraph (1) of subdivision (a), subparagraphs (A), (B), (C), and*
33 *(D) of paragraph (2) of subdivision (a), or subparagraphs (A),*
34 *(B), (C), and (D) of paragraph (3) of subdivision (a), as the case*
35 *may be. Any registered limited liability partnership or foreign*
36 *limited liability partnership intending to comply with the*
37 *alternative security provisions set forth in subparagraph (D) of*
38 *paragraph (1) of subdivision (a), subparagraph (D) of paragraph*
39 *(2) of subdivision (a), or subparagraph (D) of paragraph (3) of*
40 *subdivision (a) shall furnish the following information to the*

Secretary of State's office, in the manner prescribed in, and accompanied by all information required by, the applicable section:

TRANSMITTAL FORM FOR EVIDENCING COMPLIANCE
WITH SECTION 16956(a)(1)(D), SECTION 16956(a)(2)(D), OR
SECTION 16956(a)(3)(D) OF THE CALIFORNIA
CORPORATIONS CODE

The undersigned hereby confirms the following:

1. _____
Name of registered or foreign limited liability partnership
2. _____
Jurisdiction where partnership is organized
3. _____
Address of principal office
4. The registered or foreign limited liability partnership chooses to satisfy the requirements of Section 16956 by confirming, pursuant to Section 16956(a)(1)(D), 16956(a)(2)(D), or 16956(a)(3)(D) and pursuant to Section 16956(c), that, as of the most recently completed fiscal year, the partnership had a net worth equal to or exceeding ten million dollars (\$10,000,000), in the case of a partnership providing accountancy services, fifteen million dollars (\$15,000,000) in the case of a partnership providing legal services, or ten million dollars (\$10,000,000), in the case of a partnership providing architectural services, *engineering services, or land surveying services.*
5. _____
Title of authorized person executing this form
6. _____
Signature of authorized person executing this form

(c) Pursuant to subparagraph (D) of paragraph (1) of subdivision (a), subparagraph (D) of paragraph (2) of subdivision (a), or subparagraph (D) of paragraph (3) of subdivision (a), a registered limited liability partnership or foreign limited liability

partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding the amount required. In order to comply with this alternative method of meeting the requirements established in this section, a registered limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the Secretary of State's office, signed by an authorized member of the registered limited liability partnership or foreign limited liability partnership, accompanied by a transmittal form as prescribed by subdivision (b). In order to be current in a given year, the partnership form for confirming compliance with the optional security requirement shall be on file within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.

(d) Neither the existence of the requirements of subdivision (a) nor the extent of the registered limited liability partnership's or foreign limited liability partnership's compliance with the alternative requirements in this section shall be admissible in court or in any way be made known to a jury or other trier of fact in determining an issue of liability for, or to the extent of, the damages in question.

(e) Notwithstanding any other provision of this section, if a registered limited liability partnership or foreign limited liability partnership is otherwise in compliance with the terms of this section at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the registered limited liability partnership or foreign limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A registered limited liability partnership that has been the subject of a proceeding and that conducts business after the proceeding ends shall thereafter comply with paragraph (1), (2), or (3) of subdivision (a), in order to obtain the limitations on liability afforded by subdivision (c) of Section 16306.

1 SEC. 5. Section 16959 of the Corporations Code is amended
2 to read:

3 16959. (a) (1) Before transacting intrastate business in this
4 state, a foreign limited liability partnership shall comply with all
5 statutory and administrative registration or filing requirements of
6 the state board, commission, or agency that prescribes the rules
7 and regulations governing a particular profession in which the
8 partnership proposes to be engaged, pursuant to the applicable
9 provisions of the Business and Professions Code relating to the
10 profession or applicable rules adopted by the governing board. A
11 foreign limited liability partnership that transacts intrastate
12 business in this state shall within 30 days after the effective date
13 of the act enacting this section or the date on which the foreign
14 limited liability partnership first transacts intrastate business in
15 this state, whichever is later, register with the Secretary of State
16 by submitting to the Secretary of State an application for
17 registration as a foreign limited liability partnership, signed by a
18 person with authority to do so under the laws of the jurisdiction
19 of formation of the foreign limited liability partnership, stating
20 the name of the partnership, the address of its principal office, the
21 name and address of its agent for service of process in this state,
22 a brief statement of the business in which the partnership
23 engages, and any other matters that the partnership determines to
24 include.

25 (2) Annexed to the application for registration shall be a
26 certificate from an authorized public official of the foreign
27 limited liability partnership's jurisdiction of organization to the
28 effect that the foreign limited liability partnership is in good
29 standing in that jurisdiction, if the laws of that jurisdiction permit
30 the issuance of those certificates, or, in the alternative, a
31 statement by the foreign limited liability partnership that the laws
32 of its jurisdiction of organization do not permit the issuance of
33 those certificates.

34 (b) The registration shall be accompanied by a fee as set forth
35 in subdivision (b) of Section 12189 of the Government Code.

36 (c) The Secretary of State shall register as a foreign limited
37 liability partnership any partnership that submits a completed
38 application for registration with the required fee.

39 (d) The Secretary of State may cancel the filing of the
40 registration if a check or other remittance accepted in payment of

1 the filing fee is not paid upon presentation. Upon receiving
2 written notification that the item presented for payment has not
3 been honored for payment, the Secretary of State shall give a first
4 written notice of the applicability of this section to the agent for
5 service of process or to the person submitting the instrument.
6 Thereafter, if the amount has not been paid by cashier's check or
7 equivalent, the Secretary of State shall give a second written
8 notice of cancellation and the cancellation shall thereupon be
9 effective. The second notice shall be given 20 days or more after
10 the first notice and 90 days or less after the original filing.

11 (e) A partnership becomes registered as a foreign limited
12 liability partnership at the time of the filing of the initial
13 registration with the Secretary of State or at any later date or time
14 specified in the registration and the payment of the fee required
15 by subdivision (b). A partnership continues to be registered as a
16 foreign limited liability partnership until a notice that it is no
17 longer so registered as a limited liability partnership has been
18 filed pursuant to Section 16960 or, if applicable, once it has been
19 dissolved and finally wound up. The status of a partnership
20 registered as a foreign limited liability partnership and the
21 liability of a partner of that foreign limited liability partnership
22 shall not be adversely affected by errors or subsequent changes in
23 the information stated in an application for registration under
24 subdivision (a) or an amended registration or notice under
25 Section 16960.

26 (f) The fact that a registration or amended registration
27 pursuant to Section 16960 is on file with the Secretary of State is
28 notice that the partnership is a foreign limited liability
29 partnership and of those other facts contained therein that are
30 required to be set forth in the registration or amended
31 registration.

32 (g) The Secretary of State shall provide a form for a
33 registration under subdivision (a), which shall include the form
34 for confirming compliance with the optional security requirement
35 pursuant to subdivision (c) of Section 16956. The Secretary of
36 State shall include with instructional materials, provided in
37 conjunction with the form for registration under subdivision (a),
38 a notice that filing the registration will obligate the limited
39 liability partnership to pay an annual tax for that taxable year to
40 the Franchise Tax Board pursuant to Section 17948 of the

1 Revenue and Taxation Code. That notice shall be updated
2 annually to specify the dollar amount of this tax.

3 (h) A foreign limited liability partnership transacting intrastate
4 business in this state shall not maintain any action, suit, or
5 proceeding in any court of this state until it has registered in this
6 state pursuant to this section.

7 (i) Any foreign limited liability partnership that transacts
8 intrastate business in this state without registration is subject to a
9 penalty of twenty dollars (\$20) for each day that unauthorized
10 intrastate business is transacted, up to a maximum of ten
11 thousand dollars (\$10,000).

12 (j) A partner of a foreign limited liability partnership is not
13 liable for the debts or obligations of the foreign limited liability
14 partnership solely by reason of its having transacted business in
15 this state without registration.

16 (k) A foreign limited liability partnership, transacting business
17 in this state without registration, appoints the Secretary of State
18 as its agent for service of process with respect to causes of action
19 arising out of the transaction of business in this state.

20 (l) "Transact intrastate business" as used in this section means
21 to repeatedly and successively provide professional limited
22 liability partnership services in this state, other than in interstate
23 or foreign commerce.

24 (m) Without excluding other activities that may not be
25 considered to be transacting intrastate business, a foreign limited
26 liability partnership shall not be considered to be transacting
27 intrastate business merely because its subsidiary or affiliate
28 transacts intrastate business, or merely because of its status as
29 any one or more of the following:

30 (1) A shareholder of a domestic corporation.

31 (2) A shareholder of a foreign corporation transacting
32 intrastate business.

33 (3) A limited partner of a foreign limited partnership
34 transacting intrastate business.

35 (4) A limited partner of a domestic limited partnership.

36 (5) A member or manager of a foreign limited liability
37 company transacting intrastate business.

38 (6) A member or manager of a domestic limited liability
39 company.

1 (n) Without excluding other activities that may not be
2 considered to be transacting intrastate business, a foreign limited
3 liability partnership shall not be considered to be transacting
4 intrastate business within the meaning of this subdivision solely
5 by reason of carrying on in this state any one or more of the
6 following activities:

7 (1) Maintaining or defending any action or suit or any
8 administrative or arbitration proceeding, or effecting the
9 settlement thereof or the settlement of claims or disputes.

10 (2) Holding meetings of its partners or carrying on any other
11 activities concerning its internal affairs.

12 (3) Maintaining bank accounts.

13 (4) Maintaining offices or agencies for the transfer, exchange,
14 and registration of the foreign limited liability partnership's
15 securities or maintaining trustees or depositories with respect to
16 those securities.

17 (5) Effecting sales through independent contractors.

18 (6) Soliciting or procuring orders, whether by mail or through
19 employees or agents or otherwise, where those orders require
20 acceptance without this state before becoming binding contracts.

21 (7) Creating or acquiring evidences of debt or mortgages,
22 liens, or security interest in real or personal property.

23 (8) Securing or collecting debts or enforcing mortgages and
24 security interests in property securing the debts.

25 (9) Conducting an isolated transaction that is completed within
26 180 days and not in the course of a number of repeated
27 transactions of a like nature.

28 (o) A person shall not be deemed to be transacting intrastate
29 business in this state merely because of its status as a partner of a
30 registered limited liability partnership or a foreign limited
31 liability company whether or not registered to transact intrastate
32 business in this state.

33 (p) The Attorney General may bring an action to restrain a
34 foreign limited liability partnership from transacting intrastate
35 business in this state in violation of this chapter.

36 (q) Nothing in this section is intended to, or shall, augment,
37 diminish, or otherwise alter existing provisions of law, statutes,
38 or court rules relating to services by a California architect,
39 *California engineer, California land surveyor*, California public
40 accountant, or California attorney in another jurisdiction, or

- 1 services by an out-of-state architect, *out-of-state engineer*,
- 2 *out-of-state land surveyor*, out-of-state public accountant, or
- 3 out-of-state attorney in California.